

## Human rights

J Enoch Powell *House of Commons*

*What are human rights? In this article Enoch Powell, MP (a former Conservative Minister of Health), approaches this question through a critical discussion of Article 25 (1) of the United Nations Universal Declaration of Human Rights. Professor R S Downie in his accompanying commentary analyses Mr Powell's statements and takes up in particular Mr Powell's argument that claiming rights for one person entails compulsion on another person. In Professor Downie's view there is nothing in Article 25 (1) that cannot embody acceptable moral rights, the commonly accepted interpretation of that Article of the UN Universal Declaration of Human Rights which many people think is wholly acceptable.*

Article 25 (1) of the United Nations Universal Declaration of Human Rights, subscribed by the United Kingdom in December 1948, runs as follows:

'Everyone has a right to a standard of living adequate for the health and wellbeing of himself and of his family, including medical care'.

The Declaration was – not surprisingly – unaccompanied by any mechanism for the enforcement of the rights which it declared. In that respect it differed from the European Convention of Human Rights, to which the United Kingdom adhered in November 1950 under the auspices of the Council of Europe and which came into force in September 1953. The Convention established a European Court of Human Rights, to which the signatory states accorded supranational powers, and before which at this moment Britain awaits judgment in respect of acts committed in Northern Ireland in 1971. Significantly, there is no provision (yet) in the European Convention corresponding to Article 25 of the UN Declaration.

However it would be unwise to conclude that, just because it has no enforcement mechanism, the Universal Declaration is as harmless as it is futile. Nonsense can never be talked with impunity by anyone; and when governments solemnly talk nonsense in the name of nations, harm is certain to come of it sooner or later. Most of the contents of the Universal Declaration are not merely nonsense but pernicious nonsense; and Article 25 is in this respect typical, not least in being both nonsensical and pernicious in several different ways at the same time.

A right is a claim which is, or ought to be, enforceable against others. An individual, apart from society, cannot be conceived as having rights – or if he does, they are rights as against God, which is blasphemy. Robinson Crusoe on a desert island may experience good luck or bad luck; but he can have no rights. The concept of enforcement involves – as the word implies – the use of force, compulsion: one man's right is enforced by others being compelled to do what they would not have done of their own freewill. This is true even of immaterial rights: a right to free speech is a claim to say to others what they do not want to hear, and to do so, if necessary, thanks to the exercise of force against those who would like to interfere. But the compulsion becomes specially evident when the right is a claim to something material, because what one has another must go without: a right to free travel is a claim to compel others to transport me at their expense; a right to a pension is a claim to compel others to transfer part of their income to me.

### Compulsion is of the essence of a right

This business of compulsion is not something theoretical or peripheral; it is of the essence of a right, because there is no point in declaring a right to what everyone is going to have anyhow. The whole object of declaring a right is to justify or commend the use of compulsion to alter the existing relationship between individuals in a society. An existing right is a claim which the society already enforces. A proposed right is a claim which the proposer would like the society to enforce. In fact a statement of human rights is either a description of a society or a critique of a society.

The compulsion with which rights are concerned will be either arbitrary or lawful depending on whether the compulsion is exerted in known and foreseeable circumstances by known and foreseeable process. For the compulsion to be lawful, the right must be 'justiciable'; that is, it must be definable, so that it can be uniformly and predictably applied, upon known principles. A right not stated in justiciable terms is tantamount to a claim to exert arbitrary compulsion. Article 25 is exactly of this character. The terms 'adequate' and 'wellbeing', not to mention 'standard of living' and even

'medical care', are purely subjective: to prescribe a 'standard adequate for wellbeing' is not to interpret a rule; it is to make an arbitrary decision, and an arbitrary decision about the compulsion to be exerted upon the members of a society. The definition will be not the ruling of a judge but the manifesto of a revolutionary junta. A 'standard adequate for wellbeing' is potentially unrestricted – 'the sky's the limit' – and therefore the actual limit imposed and the performance exacted are necessarily arbitrary, the decisions of brute force.

The arbitrary implications of undefinable rights are particularly evident where the right claimed is by its nature not capable of being satisfied by any degree of compulsion exercised within the relevant society. However vague may be the concept of 'medical care adequate for health', the right clearly cannot be realized if there are no doctors. However subjective the 'standard of living adequate for health and wellbeing', it obviously cannot be achieved if population is outstripping subsistence. Unless therefore the right asserted is tautologous and meaningless – unless 'adequate' means simply whatever is available in the given circumstances – its assertion is a threat not merely of arbitrary compulsion but of unlimited and inherently futile compulsion: it is a programme of nihilistic aggression.

This is precisely the purpose with which it was framed by its authors in the United Nations. The society implicit in any statement of a right is not, in the context of the United Nations, a national society. The society intended is international – the so-called community of nations, or world society. The compulsion to be exercised in the attempt to satisfy the claim of right is not purely or mainly internal to particular societies: it is compulsion to be exercised by some societies against other societies, coercion to be brought to bear upon an international scale. The statement 'everyone has a right to medical care adequate to his health and well-being' is, in the Universal Declaration, tantamount to the highwayman's 'stand and deliver': if this right is not realizable within a society, it must be realized by compulsory redistribution and reorganization as between societies, and if it is still impracticable even by compulsion on an international scale, so much the worse for the international community! The implicit nihilism and aggression are global.

### **Nature and effects of assertions of human rights**

It is not accidental that the assertion of 'the rights of man' has been characteristic of revolutionary régimes which aspired to interfere with and overturn the systems of law and society of their neighbours; and there could be no more striking evidence of the antagonism of Soviet Russia to Trotskyism

than that 'human rights' have to be forced down its throat at Helsinki or Belgrade like spoonfuls of brimstone.

On the other hand it is possible to differentiate the nature and effects of the human rights 'declared' by the United Nations from those asserted as the basis of the American state in the second section of the Declaration of Independence. A right to 'life' may be philosophically opaque; a right to 'liberty' may mean anything or nothing; but a right to the 'pursuit of happiness' is unmistakably individualist, a claim upon society for the absence or minimum of restraint upon oneself, counterbalanced by the renunciation of restraint upon others. The right to the 'pursuit of happiness' and the right to an 'adequate standard of living' are dead opposites, as opposite as the right to pursue something and the right to be given something, as opposite as the demand for minimum compulsion in society and the demand for maximum compulsion. What a strange freak of human history it is that the Declaration of Independence should be among the lineal ancestors of the Universal Declaration of Human Rights!

It is a paradox upon which a Tory may perhaps be permitted one parting reflexion. The attempt to understand or to construct society starting from the individual is foredoomed to failure, if not to worse. The initial word 'everyone' in Article 25 (and in most of the other Articles) – however illogically linked with 'his family' – contains the same fallacy as 'all men' in the Declaration of 1776: 'rights' are not an attribute of individuals but a description of societies. Those who, wittingly or not, use the concept of 'human rights' to attack societies from within or without find in the end that the result is neither health nor wellbeing.

## **Comment**

### **The right to medical care**

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The substance of Mr Powell's argument, insofar as it can be disentangled from his rhetoric, can be stated as follows: 1) rights presuppose the existence of society; 2) rights entail the exercise of compulsion against those other than the right holders; 3) compulsion can be either arbitrary or lawful; 4) no compulsion can be lawful unless it can be uniformly applied, and uniform applicability requires unambiguous statement; 5) Article 25 (1) cannot be so stated; 6) to claim right to benefits mentioned in Article 25 (1) is therefore to endorse arbitrary compulsion; 7) in the case of Article 25 (1) the claim is such that the benefits cannot be achievable within a given society; it is therefore a threat to carry out unlimited global compulsion; 8) doctrines